Sherwood Trucking Company and Teamsters Local Union No. 957, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Case 9-CA-16258

30 April 1984

DECISION AND ORDER

BY MEMBERS ZIMMERMAN, HUNTER, AND DENNIS

On 12 April 1983 Administrative Law Judge Richard L. Denison issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, ¹ and conclusions and to adopt the recommended Order.²

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Sherwood Trucking Company, Vandalia, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

DECISION

STATEMENT OF THE CASE

RICHARD L. DENISON, Administrative Law Judge. This case was heard at Dayton, Ohio, on October 28 and 29, 1981, based on an original charge in Case 9-CA-16258, filed by the Union on January 2, 1981. The complaint, issued February 13, 1981, as amended, alleges that the Respondent violated Section 8(a)(1) and (3) of the Act in that, as alleged successor to Foreman Express Company, Emery Air Freight Corporation's pickup and delivery agent at the Dayton, Ohio, area airport, the Respondent at all times since on or about October 24, 1980, failed and refused to hire or retain the former employees of Foreman because of their representation by and affiliation with the Union, as evidenced by statements allegedly made to employees by Respondent's Sales and Service Manager Joe B. Phillips, an alleged supervisor.

The Respondent's answer denies the allegations of unfair labor practices alleged in the complaint. On the entire record in the case, including my consideration of the briefs and observation of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Based on the allegations of paragraphs 2, 3, and 5 of the complaint admitted by the Respondent's answer, and the stipulation of jurisdictional facts by the parties at the outset of the hearing, I find that the Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE UNFAIR LABOR PRACTICES

For an unspecified period of time prior to the events which comprised this case, Emery Air Freight Corporation has engaged in the air freight business at a facility located at the Dayton, Ohio, airport in Vandalia, Ohio. Emery contracts its pickup and delivery service and over-the-road or line haul operations to agents which perform this work in trucks with Emery markings.1 Sometime before June 1, 1977, Emery's drayage contractor had been Foreman Express, Inc. of Columbus, Ohio. Foreman's only supervisor in charge of its Vandalia operations, with hiring and firing authority, was its Manager-Dispatcher Joe Phillips. In June 1980 Foreman signed a 3-year collective-bargaining agreement with Local 957 governing the wages, hours, and working conditions of the drivers and combination driver-dockman at the Vandalia terminal. The contract contains union-security clauses, requiring employees to become and remain members of the Union, and providing for checkoff dues deduction. On June 27, 1980, Foreman and Local 957 signed a "contract addendum" increasing the drivers' wage rates and health insurance, but otherwise extending the contract until March 30, 1981. Foreman then asked

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. Standard Dry Wall Products, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The judge made a number of apparently inadvertent errors in sec. II of his decision. In the first paragraph he stated that the Union entered into a 3-year collective-bargaining agreement with Foreman Express Company in June 1980, whereas the record indicates that this basic agreement was entered into in or around June 1977. In subsequent paragraphs the judge stated that Foreman's supervisor, Joe Phillips, remained at the terminal on Saturday afternoon, 25 October 1980, to inform Foreman employees of Foreman's cessation of operations, and that later that same day Phillips was hired by the Respondent, whereas the record establishes that these events took place on Friday, 24 October 1980. Finally, the judge stated that Phillips needed a letter to show that he was no longer employed by Foreman, whereas the record establishes that the letter in question was needed by former Foreman employee Darrell Presley.

² Member Hunter agrees with adopting the recommended Order of the judge, except that he would allow the Respondent to show at a compliance hearing that fewer than 12 jobs would have been available irrespective of the Respondent's unfair labor practices. If the Respondent shows that jobs were not available for all 12, Member Hunter would not order the Respondent to reinstate all of the discriminatees, rather the Respondent should place on a preferential hiring list all remaining discriminatees who, under nondiscriminatory criteria, would have been hired but for the lack of available jobs. Spencer Foods, 268 NLRB 1483 (1984).

¹ The pickup and delivery service is also referred to in the record as drayage.

Emery for a 10-percent rate increase. Thus, in July or August 1980, at the request of his superiors, Emery's Vandalia Manager Gary O'Dell began talking with prospective contractors to replace Foreman.

Jim Irwin, president of Sherwood Trucking Company, and O'Dell met in Akron, Ohio, about July 10. According to O'Dell they talked about the type of vehicles Emery desired, and what he expected in the way of rates. At that time O'Dell specified that of Foreman's Vandalia employees, only Phillips was to be retained as manager, since he had "... not been satisfied with Foreman and wanted to just start completely over, completely new." O'Dell did not elaborate in his testimony concerning the specific causes of his purported dissatisfaction, but repeatedly couched such expressions only in general terms, e.g., that Foreman "... was not in good order." In his testimony Irwin said O'Dell feared that Foreman would go bankrupt, but also expressed minor concerns over the age and appearance of Foreman's equipment, as exemplified by its failure to repair one truck which had been involved in an accident. Irwin agreed that O'Dell wanted a new driver work force to increase efficiency, and bring productivity to a satisfac-

Sherwood submitted a written bid, dated October 17, which proposed, inter alia, to use nine drivers furnished by a personnel leasing service and paid a percentage of the revenue as their sole compensation. The document also contains the observation that ". . . this should allow us to attract good drivers who are satisfied. If, however, the driver should become dissatisfied, we could always switch to another personnel leasing service." Sherwood's bid also signified its intention to utilize its own manager.

The unstable situation described above escalated to the crisis stage on Friday, October 24. On that day Emery refused the 10-percent rate increase Foreman had requested, and Foreman notified O'Dell that they would discontinue service at the end of the day. Shortly thereafter, about 1 p.m., O'Dell telephoned William Blodgett, the owner of Sherwood, whom he located in Indianapolis. O'Dell asked Blodgett to begin pickup and delivery service for Emery on a temporary basis at 8 a.m. on Monday, October 27, utilizing 10 trucks and 10 new drivers. Blodgett completed his Indianapolis business, called Irwin and assigned him the task of securing the trucks through a rental agency and the drivers through a personnel service, and drove to Dayton. He arrived at Emery's Vandalia terminal at about 5 p.m. for a prearranged conference with O'Dell and his superior, Mike Gunkel, Emery's Vandalia manager.³ During the course of this meeting, which according to O'Dell's and Blodgett's testimony took place somewhere between 5 and 6 p.m., the participants discussed the details of the conditions under which Sherwood would begin the proposed operations.⁴ Neither O'Dell nor Blodgett attempted to relate everything that was said during the course of this conference. It seems certain, however, from what they did recall, that the focal point of the discussion was centered on Gunkel's expressed desire "... that the [Foreman] drivers were expendable, in order to get another operation—better operation," but that Emery desired that Blodgett employ Phillips as its Vandalia operations manager. O'Dell denied making any mention of Foreman's unit contract during these final negotiations, except in reference to the economics of what Emery had paid and had been asked to pay for Foreman's services, which was directly related to Foreman's new agreement with the Union.

Immediately following his reaching an understanding with O'Dell and Gunkel, Blodgett interviewed and hired Joe Phillips to run Sherwood's new operation. Phillips had been winding down Foreman's operations at his work area in another part of the terminal. The discussion between Phillips and Blodgett lasted for about 15 or 20 minutes. During that time Blodgett questioned Phillips about how much he had been making with Foreman, including the nature of his fringe benefits. Blodgett told Phillips that Sherwood was lining up drivers and trucks and that he would have to give each driver a road test that weekend. 6

Phillips usually left the terminal at 5 p.m. but remained that Saturday evening until each of the drivers had reported in, to inform them of Foreman's cessation of business. One of the first drivers to return was Union Steward Lawrence W. Coomer Jr., who entered the terminal about 4:30 or 4:45 p.m. After talking to Phillips about the shutdown, Coomer phoned Union Representative Dick Loy at Local 957. Loy promised to send the drivers withdrawal cards. Terry Hutton and Bernard Noble received the news from Phillips upon their return shortly thereafter. Noble's conversation with Phillips was interrupted when Phillips was summoned to O'Dell's office for his interview. Darrell Presley, who had one of the longest runs and usually returned last, talked with Phillips at about 7 to 7:15 p.m.

Meanwhile, pursuant to his instructions from Blodgett, Irwin was frantically attempting to secure trucks and drivers. Through numerous phone calls from his office in Akron, he obtained 10 trucks from rental agencies, and drivers through the weekend cooperation of Thomas J. Gloady, the manager of Crown Services Company, a personnel agency.⁷

² O'Dell also talked with representatives of Quick Air Freight, Inc., and PBF Industries, both of whom submitted written bids dated November 6 and October 24, 1980, respectively.

³ O'Dell and Blodgett agree that their meeting took place at this time. I therefore find that Irwin was mistaken when he testified that Blodgett telephoned him from Indianapolis about 4:45 p.m. on October 24. Gunkel did not testify.

⁴ Blodgett was not at all unknown to the Emery people, since he had previously served as Emery's corporate treasurer, and subsequent to his departure from Emery was cartage agent for Emery in the Akron-Canton area.

⁵ Although Sherwood began operations on a temporary or trial status, Respondent became Emery's permanent agent at Vandalia shortly thereafter.

⁶ In addition Phillips testified that O'Dell had previously told him that he was not satisfied with the attitude of the Foreman drivers.

⁷ Irwin obtained three drivers through his own efforts. At that time Sherwood was already supplying Emery with over-the-road or line haul service from the Dayton terminal to various other cities, utilizing these men whom Irwin now drafted for use in the new operation.

On Sunday, October 26, 11 driver candidates were sent by Gloady to Sherwood for road testing by Phillips. Those approved by Phillips were hired. Two or three were rejected by Phillips, and were not hired. Phillips agreed that beginning Monday, October 27, he alone directed operations for Sherwood at Vandalia, where he possessed discharge authority. I find that from the time of his hiring, on Saturday evening, October 25, Phillips was a supervisor of the Respondent and an agent acting on Respondent's behalf, within the meaning of Section 2(11) and (13) of the Act, respectively.

On the night of October 26, pursuant to instructions given him by Phillips on October 24, Terry Hutton went to Phillips' residence seeking information concerning whether or not he would still be employed by the new operation beginning Monday. Phillips told Hutton that the new company was Sherwood Trucking Company and that the Foreman Express drivers would not be hired because they were union affiliated "... and that was it." Phillips stated that he was to report for work on Monday to run the Sherwood operation. Because of the finality of Phillips' explanation, Hutton never bothered to formally apply for employment through Crown.

Following some weekend discussion among Darrell Presley and former Foreman drivers Verl Smith, Ted Williams, and Bill Woosley, these men met at a prearranged location in Vandalia at 7 a.m. on October 27, and proceeded to the terminal seeking employment. There, according to Presley, they found Joe Phillips giving directions to the new drivers with the aid of a wall map of the Dayton area. While the other men who had accompanied Presley engaged in conversation near the entrance to the building, Presley approached Phillips and asked to fill out an application, inquiring concerning his chances of obtaining employment. Phillips responded, "To tell you the truth, there is no chance. Mr. Blodgett doesn't want anything to do with the Union. And I don't think there's no use of you putting an application in." About 2 weeks later Presley talked to Phillips again at the terminal. The occasion was Phillips' need for a letter, to the effect that he was no longer employed by Foreman Express, in order to apply for food stamps. Presley commented that he heard that Phillips was having a problem keeping a driver on the route to Springfield, Presley's former route. Presley asked for the job. Phillips answered that they had new men, and a whole new operation, and that there was no chance of his getting on with the Company.

At the time of his termination on October 24, Lawrence Coomer Jr. had been scheduled for a month's vacation. Undaunted by the events of the day he left the area, returning on November 25. On Sunday evening, November 30, he had a conversation with Joe Phillips at Coomer's parents' home. Coomer and Phillips are distantly related. Coomer asked about his chances of being reinstated. Phillips replied that the Union was the reason that no one had been called back and that the Company did not want any of the Foreman drivers because of the Union. Coomer asked who was performing the work, and Phillips answered that they had obtained the drivers from Crown. When Coomer asked if he could apply, Phillips responded that he could "go down," but that it

would not do him any good. Phillips also remarked that his job had been "hectic" because he was trying to break in the new men. Thereafter, Coomer saw no point in further efforts to obtain employment with Sherwood. As former steward, he contacted the remainder of the former Foreman drivers and told them that there was no sense wasting their time applying for a job at Sherwood.

About 3 weeks after Foreman ceased operating. Bernard Noble procured the final paychecks from owner Ron Foreman for distribution to the terminated drivers. Since Joe Phillips' paycheck was also included, he called Phillips, who came to Noble's home to secure his check. A lengthy conversation ensued during the course of which Phillips openly discussed the new situation. He said that Blodgett had big money, and was running a first-class type operation. Phillips stated that it was a shame that the drivers who had been used to going second class with Foreman could have gone first class with Blodgett. He said that it was a pain to try to open a business on the first day with all new employees when no one knew anything, and he was not even sure that they knew how to drive a truck. He said he had already found it necessary to terminate the new driver on the Springfield run, who had departed with 20 deliveries to make and returned 4 hours later without having made any deliveries. Phillips said he was having quite a few problems that way, and that it was a shame that the old drivers were not retained because the transition would have been a lot smoother because everyone knew what was going on. Then it would have just been a matter of changing up-front companies. Phillips concluded by stating that if they had not been union they would still be working, but that there was no way the Union would ever get in there.

Phillips denied telling any of the former Foreman drivers that their union affiliation was the reason they were not employed by Sherwood. The credulity of this denial is destroyed by the mutually corroborative testimony of Coomer, Hutton, Presley, and Noble, as related above. In addition, Noble had one further conversation with Phillips on January 6, 1981, in which Phillips again acknowledged that the rejection of the Foreman employees was precipitated by their union representation. This conversation was tape recorded by Noble. The authenticated recording, plus a stipulated transcription, is in evidence. I therefore credit the testimony of Coomer, Hutton, Presley, and Noble over that of Phillips concerning these conversations.

I also find the testimony of O'Dell, to the effect that his dissatisfaction with the Foreman drivers stemmed from work-related incidents, to be incredible. O'Dell was unable to relate the specifics of a single incident involving driver misconduct or poor work. On the other hand, the Charging Party introduced evidence of instances where drivers Noble and Coomer had been commended by O'Dell and other members of Emery management for their good performance. I am, therefore, persuaded that the only reason the Foreman drivers were not hired by Sherwood was that Emery and Sherwood feared that such a course of action would lead to the unionization of their operation. I therefore find that the Respondent vio-

lated Section 8(a)(1) and (3) of the Act in refusing to hire the Foreman drivers. The fact that many of these drivers made no formal application for employment under the circumstances presented is no impediment, in my view, since the evidence shows that the futility of such an effort had been communicated to them, including Phillips' explicit remarks. As the Board has often held under similar circumstances, they were not required to perform a useless act in order to protect their rights under the statute. *Macomb Block & Supply, Inc.*, 223 NLRB 1285, 1286 (1976).

There remains for consideration the issue of whether the Respondent has acquired the legal status of a successor to Foreman, and is thereby obligated to bargain with the Union. In Burns Security Services, 406 U.S. 272 (1972), the United States Supreme Court held that the Board could not order a successor employer to honor its predecessor's collective-bargaining agreement to which the successor had never been bound. However, the Court also held that "where the bargaining unit remains unchanged and a majority of the employees hired by the new employer are represented by a recently certified bargaining agent there is little basis for faulting the Board's implementation of the expressed mandates of Section 8(a)(5) and Section 9(a) by ordering the employer to bargain with the incumbent union." 406 U.S. at 281. The Burns ruling has been made applicable to bargaining units which are not based upon a Board certification, but arise from lawful recognition. In considering whether or not an employer is a successor, the Board examines the total circumstances in each case with special scrutiny given to four major considerations. The chief among these is the continuity of the work force, i.e., the majority question. The other factors are the degrees of continuity in the employing industry, continuity with respect to the appropriate bargaining unit, and the impact of any hiatus in operations which may have occurred.

Applying these principles to the instant case the following becomes readily apparent. Since Foreman ceased operations on Friday, October 24, and Sherwood immediately began securing trucks and drivers in order to commence serving Emery on Monday morning, October 27, no hiatus in operations existed. Both Foreman and Sherwood performed pickup and delivery service, or drayage, for Emery, operating from Emery's Vandalia terminal and serving the same customers on the same routes. The size of the work force and the job functions performed by the employees are virtually the same. Since Joe Phillips, who formerly managed Foreman's Vandalia operation, also performs the identical function for Sherwood, supervisory continuity also exists. It is therefore clear that the scope and composition of the collective-bargaining unit has remained unchanged, and that the unit specified in the collective-bargaining agreement between Foreman and Local 957 remains an appropriate unit.8 Thus, the only difference between Foreman's and Sherwood's operations having a significant effect on Sherwood's status as a successor is the lack of continuity of the work force, or, simply put, the fact that Sherwood did not hire any, let alone a majority, of Foreman's unit employees. This consideration, which might well preclude a finding of successorship in the context of other dissimilar cases, represents only an illusory obstacle to such a finding in the instant proceeding. I have found that the Respondent failed and refused to hire or retain the 12 Foreman drivers solely because of their union affiliation and the fear that the new operation would become unionized. In both the Burns case and in Howard Johnson Co., 417 U.S. 249 (1974), while acknowledging that a successor employer is not required to hire the employees of its predecessor, the Court likewise noted that it was a violation of Section 8(a)(3) of the Act to refuse to hire or retain the predecessor's employees solely because they were union members or to avoid having to recognize the Union. This is exactly what happened in the present case. The record shows that at the time of their termination Foreman's drivers were dues-paying members of Local 957, in accordance with the union-security provisions of the collective-bargaining agreement. It is therefore plain that except for Respondent's unlawful refusal to hire or retain them, the Union would have been the collective-bargaining representative of a majority of Sherwood's employees in the appropriate collective-bargaining unit, and that Sherwood is legally the successor to Foreman. I so find.

CONCLUSIONS OF LAW

- 1. The Respondent, Sherwood Trucking Company, is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
- 2. Teamsters Local Union No. 957, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.
- 3. All drivers and combination driver-dockmen employed by Sherwood Trucking Company at the Vandalia, Ohio terminal of Emery Air Freight, excluding all office clerical employees, management trainees, garage employees, dispatchers, watchmen, janitors, truck drivers categorized as independent contractors, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.
- 4. At all times material herein the Union was the exclusive collective-bargaining representative of the employees of Foreman Express, and by virtue of Sherwood Trucking Company's status as the successor employer to Foreman Express continues to be and is the exclusive collective-bargaining representative of the employees in said unit at Sherwood Trucking Company.
- 5. By telling employees, through its Manager and Supervisor Joe B. Phillips, that they were not hired or retained by Sherwood because of their past and current

The collective-bargaining agreement found to be appropriate is: All drivers and combination driver-dockmen employed by Sherwood Trucking Company at the Vandalia, Ohio terminal of Emery Air Freight, excluding all office clerical employees, management trainees, garage employees, dispatchers, watchmen, janitors, truck drivers

categorized as independent contractors, guards and supervisors as defined in the Act.

union affiliation, the Respondent violated Section 8(a)(1) of the Act.

- 6. By refusing to hire or retain Don Angel, William Caripides, Larry Coomer, Terry Hutton, Mike Jeckering, Hugh Jordan, Bernard Noble, Darrell Presley, Mark Rosso, Verl Smith, Ted Williams, and Bill Woosley, because of their union affiliation and because it feared the unionization of its operations, the Respondent violated Section 8(a)(1) and (3) of the Act.
- 7. The unfair labor practices described above are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent violated the Act as specified in the section of this Decision entitled "Conclusions of Law," I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent effectively destroyed the collective-bargaining unit by unlawfully refusing to hire or retain the Foreman drivers, I find it necessary, in order to effectuate the remedial policy of attempting, as near as possible, to restore the status quo ante, to order the Respondent, upon request, to bargain with the Union. The record evidence clearly shows that the Respondent followed a course of action deliberately designed to eliminate the collective-bargaining process. Under these circumstances, anything short of a bargaining order would permit the Respondent to profit from its unlawful conduct. This conclusion is reached in full realization of the fact that there is no allegation that the Respondent violated Section 8(a)(1) and (5) of the Act. However, in my view, this portion of the remedy is warranted by the devastating result achieved by the Respondent's unfair labor practices, and by my assessment of the policy followed by the Board in light of the United States Supreme Court's decision in NLRB v. Gissel Packing Co., 395 U.S. 575 (1969). In addition, I shall order the Respondent to offer Don Angel, William Caripides, Larry Coomer, Terry Hutton, Mike Jeckering, Hugh Jordan, Bernard Noble, Darrell Presley, Mark Rosso, Verl Smith, Ted Williams, and Bill Woosley, immediate employment to the positions to which they would have been entitled had they not been discriminated against, or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings they may have suffered as a result of the discrimination against them, by paying them backpay computed on a quarterly basis, plus interest, as prescribed in F. W. Woolworth Co., 90 NLRB 289 (1950), and Florida Steel Corp., 231 NLRB 651 (1977).9 The Respondent will also be ordered to post an appropriate notice.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁰

ORDER

The Respondent, Sherwood Trucking Company, Vandalia, Ohio, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Discouraging membership in Teamsters Local Union No. 957, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, by refusing to consider for employment or by refusing to employ or retain employees because of their union membership or activities, by threatening employees that the reason they have not been hired or retained is their union affiliation, or in any like or related manner discriminating against employees in regard to hire and tenure of employment or any terms or conditions of employment.
- (b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist Teamsters Local Union No. 957, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Offer Don Angel, William Caripides, Larry Coomer, Terry Hutton, Mike Jeckering, Hugh Jordan, Bernard Noble, Darrell Presley, Mark Rosso, Verl Smith, Ted Williams, and Bill Woosley, immediate employment in the positions to which they would have been entitled had they not been discriminated against, or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings they may have suffered in the manner set forth in the section of this Decision entitled "The Remedy."
- (b) Recognize and, on request, bargain with Teamsters Local Union No. 957, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive collective-bargaining representative of all the employees in the appropriate unit and, if an understanding is reached, embody it in a signed agreement.
- (c) Post in the portion of the Vandalia, Ohio terminal from which it conducts its operations at that location, copies of the attached notice marked "Appendix."¹¹

⁹ See generally Isis Plumbing Co., 138 NLRB 716 (1962).

¹⁰ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the

Board and all objections to them shall be deemed waived for all purposes.

poses.

11 If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT discourage membership in Teamsters Local Union No. 957, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, by refusing to hire or retain employees because of their union membership or activities, nor will we threaten them by telling them that the reason they have not been retained or considered for employment is their union affiliation, nor will we in any like or related manner discriminate against employees in regard to hire and tenure of employment or any terms or conditions of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights to self-organization, to form labor organizations, to join or assist Teamsters Local Union 957, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, to bargain collectively with representatives of their own choosing, and to engage in

any other concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.

WE WILL offer former employees of Foreman Express named below immediate employment in the positions to which they would have been entitled had they not been discriminated against, or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings they may have suffered as the result of our discrimination against them, with interest.

Don Angel
William Caripides
Larry Coomer
Terry Hutton
Mike Jeckering
Hugh Jordan

Bernard Noble
Darrell Presley
Mark Rosso
Verl Smith
Ted Williams
Bill Woosley

WE WILL recognize and, upon request, bargain with Teamsters Local Union No. 957, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive collective-bargaining representative of all our employees in the appropriate unit and, if an understanding is reached, embody it in a signed agreement. The appropriate unit is:

All drivers and combination driver-dockmen employed by Sherwood Trucking Company at the Vandalia, Ohio terminal of Emery Air Freight, excluding all office clerical employees, management trainees, garage employees, dispatchers, watchmen, janitors, truck drivers categorized as independent contractors, guards and supervisors as defined in the Act.

SHERWOOD TRUCKING COMPANY